IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2280 OF 2007

Reclamation Properties (India) Pvt.Ltd

..Petitioner

vs

Asst.Commissioner of Income Tax
Range 10 (1) Mumbai & anr .. Respondents

Ms.A.Vissanji with Mr.S.J.Mehta for Petitioner
Mr.Vimal Gupta with Mr.P.S.Sahadevan for
Respondents

CORAM : F.I.REBELLO AND
R.S.MOHITE, JJ

DATED : 4TH DECEMBER, 2007

P.C.

1. An order of assessment has already been passed pursuant to the notice issued under section 148 of the Income Tax Act. The learned counsel contends that the said order was passed without considering the unreported judgment of this Court in Writ Petition No.91 of 2007 in the case of Asian Paints Ltd vs Dy.Commissioner of Income Tax and ors and other petitions decided on 29th January 2007. Our attention is invited to the following observations of this Court :

> " We also direct that the I.T.O. concerned shall follow the above procedure strictly in all such cases of reopening of assessment. "

It is contended that therefore this is the law declared by this Court. To constitute the ratio decedendi of the judgment which a co-ordinate Bench must consider the following amongst other considerations must be satisfied:

a) The matter must be in issue

b) The matter requires to be answered.

c) It must be answered by reasons

The issue as to whether the provisions of the Act and rules require the adjudicating authority generally to grant time was not in issue. The issue arose from the peculiar facts of that case. That is how the ratio of that judgment must be understood.

In the instant case, inspite of the objections raised by the petitioners, it is contended that though an adjournment was sought, the Assessing Officer proceeded to pass the order.

Once an order is passed it is open to the petitioners herein to challenge the same by appropriate proceedings. It is not the case of the petitioners that the grounds which are available cannot be raised by the petitioners before the appellate authority.

Considering the above, in our view, this is not a fit case for exercising our extraordinary jurisdiction.

Petition stands rejected.

(F.I.Rebello, J)

(R.S.Mohite, J)